

**Executive Summary – Enforcement Matter – Case No. 44158**  
**Cypress Hills Limited dba The Challenge at Cypress Hills**  
**RN101188787**  
**Docket No. 2012-1003-PWS-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

PWS

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

The Challenge at Cypress Hills, 1126 Cypress Valley Lane, Marshall, Harrison County

**Type of Operation:**

Public water supply

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 23, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$2,490

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$2,490

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002 and September 2011

**Executive Summary – Enforcement Matter – Case No. 44158**  
**Cypress Hills Limited dba The Challenge at Cypress Hills**  
**RN101188787**  
**Docket No. 2012-1003-PWS-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** April 16, 2012

**Date(s) of NOE(s):** April 20, 2012

***Violation Information***

1. Failed to collect routine distribution water samples for coliform analysis [30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d)].
2. Failed to collect at least four repeat distribution samples within 24 hours of being notified of a total coliform-positive result [30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii)].
3. Failed to collect one raw groundwater source *Escherichia coli* sample from the Facility's well within 24 hours of being notified of a distribution total coliform-positive result [30 TEX. ADMIN. CODE § 290.109(c)(4)(B)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require Respondent to:

- a. Within 10 days, begin complying with applicable coliform monitoring requirements by collecting routine and repeat distribution samples and raw groundwater source *Escherichia coli* samples; and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six months of compliant monitoring; and
- b. Within 195 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 44158**  
**Cypress Hills Limited dba The Challenge at Cypress Hills**  
**RN101188787**  
**Docket No. 2012-1003-PWS-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Jim Fisher, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2537; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** David Carlile, President, Cypress Hills Limited, 400 South Alamo Boulevard, Marshall, Texas 75670

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

## DATES

Assigned  
PCW

7-May-2012  
14-May-2012

Screening

11-May-2012

EPA Due

31-Mar-2012

## RESPONDENT/FACILITY INFORMATION

Respondent Cypress Hills Limited dba The Challenge at Cypress Hills  
Reg. Ent. Ref. No. RN101188787  
Facility/Site Region 5-Tyler Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 44158 No. of Violations 1  
Docket No. 2012-1003-PWS-E Order Type Findings  
Media Program(s) Public Water Supply Government/Non-Profit No  
Multi-Media EC's Team Enforcement Team 2

Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

## Penalty Calculation Section

### TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$1,250

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 44.0% Enhancement Subtotals 2, 3, & 7 \$550

Notes Enhancement for eight NOV's with same/similar violations and two NOV's with dissimilar violations.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement\* Subtotal 6 \$0

Total EB Amounts \$133  
Approx. Cost of Compliance \$125  
\*Capped at the Total EB \$ Amount

### SUM OF SUBTOTALS 1-7

Final Subtotal \$1,800

### OTHER FACTORS AS JUSTICE MAY REQUIRE

7.4%

Adjustment \$133

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement for the costs of compliance associated with violation no. 1.

Final Penalty Amount \$1,933

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$1,933

### DEFERRAL

0.0%

Reduction

Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

### PAYABLE PENALTY

\$1,933

Screening Date 11-May-2012

Docket No. 2012-1003-PWS-E

PCW

Respondent Cypress Hills Limited dba The Challenge at Cypress Hills

Policy Revision 2 (September 2002)

Case ID No. 44158

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101188787

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	8	40%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 44%>> **Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%>> **Compliance History Summary****Compliance  
History  
Notes**

Enhancement for eight NOVs with same/similar violations and two NOVs with dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 44%

Screening Date 11-May-2012

Docket No. 2012-1003-PWS-E

PCW

Respondent Cypress Hills Limited dba The Challenge at Cypress Hills

Policy Revision 2 (September 2002)

Case ID No. 44158

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101188787

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.109(c)(2)(A)(i) and Tex. Health &amp; Safety Code § 341.033(d)

Violation Description

Failed to collect routine distribution water samples for coliform analysis for the months of March 2011 through July 2011.

Base Penalty \$1,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to collect routine coliform samples could expose the customers of the Facility to undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

## Violation Events

Number of Violation Events 5

153 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

Five monthly events are recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$1,933

This violation Final Assessed Penalty (adjusted for limits) \$1,933

# Economic Benefit Worksheet

**Respondent** Cypress Hills Limited dba The Challenge at Cypress Hills

**Case ID No.** 44158

**Reg. Ent. Reference No.** RN101188787

**Media** Public Water Supply

**Violation No.** 1

**Percent Interest** 5.0  
**Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	1-Mar-2011	31-Jul-2011	1.33	\$8	\$125	\$133
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

The avoided cost includes the estimated amount necessary to conduct routine coliform sampling (\$25 per sample x 5 samples), calculated for the months sampling was not conducted.

**Approx. Cost of Compliance** \$125

**TOTAL** \$133





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

**DATES** **Assigned** 7-May-2012 **PCW** 14-May-2012 **Screening** 11-May-2012 **EPA Due** 31-Mar-2012

## RESPONDENT/FACILITY INFORMATION

**Respondent** Cypress Hills Limited dba The Challenge at Cypress Hills  
**Reg. Ent. Ref. No.** RN101188787  
**Facility/Site Region** 5-Tyler **Major/Minor Source** Minor

## CASE INFORMATION

**Enf./Case ID No.** 44158 **No. of Violations** 2  
**Docket No.** 2012-1003-PWS-E **Order Type** Findings  
**Media Program(s)** Public Water Supply **Government/Non-Profit** No  
**Multi-Media** **Enf. Coordinator** Bridgett Lee  
**EC's Team** Enforcement Team 2

**Admin. Penalty \$ Limit Minimum** \$50 **Maximum** \$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$300

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 44.0% Enhancement **Subtotals 2, 3, & 7** \$132

**Notes** Enhancement for eight NOVs with same/similar violations and two NOVs with dissimilar violations.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$125  
 Approx. Cost of Compliance \$125  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$432

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 28.9% **Adjustment** \$125

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes** Recommended enhancement for the costs of compliance associated with violation nos. 1 and 2.

**Final Penalty Amount** \$557

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$557

**DEFERRAL** 0.0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes** No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$557

Screening Date 11-May-2012

Docket No. 2012-1003-PWS-E

PCW

Respondent Cypress Hills Limited dba The Challenge at Cypress Hills

Policy Revision 3 (September 2011)

Case ID No. 44158

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101188787

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	8	40%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 44%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for eight NOVs with same/similar violations and two NOVs with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 44%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 44%

**Screening Date** 11-May-2012 **Docket No.** 2012-1003-PWS-E **PCW**  
**Respondent** Cypress Hills Limited dba The Challenge at Cypress Hills *Policy Revision 3 (September 2011)*  
**Case ID No.** 44158 *PCW Revision August 3, 2011*  
**Reg. Ent. Reference No.** RN101188787  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Bridgett Lee  
**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 290.109(c)(3)(A)(ii)  
**Violation Description** Failed to collect at least four repeat distribution samples within 24 hours of being notified of a total coliform-positive result. Specifically, it was documented that the Facility did not collect at least four required repeat samples after a coliform-positive sample was reported in October 2011.

**Base Penalty** \$1,000

>> Environmental, Property and Human Health Matrix

**OR** **Release** **Harm**  
 Major Moderate Minor  
 Actual     
 Potential    **Percent** 15.0%

>> Programmatic Matrix

Falsification Major Moderate Minor **Percent** 0.0%

**Matrix Notes** Failure to conduct repeat sampling could expose customers of the Facility to contaminants, which would exceed levels protective of human health.

**Adjustment** \$850

\$150

Violation Events

Number of Violation Events 1 31 Number of violation days

mark only one with an x  
 daily   
 weekly   
 monthly ☒  
 quarterly   
 semiannual   
 annual   
 single event

**Violation Base Penalty** \$150

One monthly event is recommended.

Good Faith Efforts to Comply

**0.0%** Reduction **\$0**  
 Before NOV NOV to EDP RP/Settlement Offer  
 Extraordinary    
 Ordinary    
 N/A ☒ (mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

**Estimated EB Amount** \$100

**Violation Final Penalty Total** \$279

**This violation Final Assessed Penalty (adjusted for limits)** \$279

# Economic Benefit Worksheet

**Respondent** Cypress Hills Limited dba The Challenge at Cypress Hills  
**Case ID No.** 44158  
**Reg. Ent. Reference No.** RN101188787  
**Media** Public Water Supply  
**Violation No.** 1

**Percent Interest** 5.0  
**Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	11-Oct-2011	12-Oct-2011	0.00	\$0	\$100
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to collect all required repeat samples (\$25 per sample x 4 samples), calculated from the 24 hours after the notice of the coliform-positive sample in October 2011.

Approx. Cost of Compliance \$100

**TOTAL** \$100

Screening Date 11-May-2012

Docket No. 2012-1003-PWS-E

PCW

Respondent Cypress Hills Limited dba The Challenge at Cypress Hills

Policy Revision 3 (September 2011)

Case ID No. 44158

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101188787

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.109(c)(4)(B)

Violation Description

Failed to collect one raw groundwater source Escherichia coli sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive result during the month of October 2011.

Base Penalty \$1,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to collect a triggered source monitoring sample could result in customers of the Facility being exposed to contaminants, including Escherichia coli, which would exceed levels protective of human health.

Adjustment \$850

\$150

## Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$150

One monthly event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$150

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$279

This violation Final Assessed Penalty (adjusted for limits) \$279

# Economic Benefit Worksheet

**Respondent** Cypress Hills Limited dba The Challenge at Cypress Hills  
**Case ID No.** 44158  
**Reg. Ent. Reference No.** RN101188787  
**Media** Public Water Supply  
**Violation No.** 2

**Percent Interest** 5.0  
**Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	11-Oct-2011	12-Oct-2011	0.00	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to conduct triggered source monitoring of the drinking water at the Facility (\$25 per sample), calculated from the 24 hour period after the notice of the coliform-positive sample in October 2011.

Approx. Cost of Compliance \$25

**TOTAL** \$25

## Compliance History Report

Customer/Respondent/Owner-Operator: CN603229782 Cypress Hills Limited Classification: AVERAGE Rating: 1.50

Regulated Entity: RN101188787 THE CHALLENGE AT CYPRESS HILLS Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1020075

Location: 1126 CYPRESS VALLEY LANE, MARSHALL, HARRISON COUNTY, TX

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: May 11, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 11, 2007 to May 11, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Bridgett Lee Phone: (512) 239 - 2565

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: N/A

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 04/19/2012 (1000908)
- 2 04/20/2012 (1001060)
- 3 04/20/2012 (1001072)
- 4 04/20/2012 (1001080)
- 5 04/20/2012 (1001085)
- 6 04/20/2012 (1001088)
- 7 05/02/2012 (1001184)
- 8 05/29/2007 (561077)
- 9 04/10/2008 (670577)
- 10 02/06/2012 (982841)
- 11 03/26/2012 (982842)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/31/2007	(561077)	CN603229782
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(2)		
Description:	Failure to maintain the public water system's operating records: complaints, flushing, maintenance.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(3)(E)(ix)		
Description:	Failure by the regulated entity to develop and maintain an up to date system monitoring plan.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(v)		
Description:	Failure to make accessible for review during inspections: calibration records for flow meters.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(ii)		
Description:	Failure to make accessible for review during inspections: the results of inspections.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.42(l)		
Description:	Failure to compile and maintain current a thorough plant operations manual.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.42(j)		
Description:	Failure to certify the chemicals used for disinfection.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(ii)(III)		
Description:	Failure to keep on file for commission review the volume of water treated each week.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)		
Description:	Failure to keep on file for commission review the amount of chemicals used each week.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)		
Description:	Failure to perform chlorine residual tests.		
Date:	04/10/2008	(670577)	CN603229782
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(f)(4)		
Description:	BACT - MONITORING/REPORTING VIOLATIONS		
Date:	04/29/2011	(1000908)	CN603229782
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)		
Description:	TCR Routine Monitoring Violation 03/2011 - Failure to collect any routine monitoring sample(s).		
Date:	06/03/2011	(1001060)	CN603229782
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)		
Description:	TCR Routine Monitoring Violation 04/2011 - Failure to collect any routine monitoring sample(s).		
Date:	07/07/2011	(1001072)	CN603229782
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)		
Description:	TCR Routine Monitoring Violation 05/2011 - Failure to collect any routine monitoring sample(s).		



Date: 08/26/2011 (1001080) CN603229782  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
 Description: TCR Routine Monitoring Violation 06/2011 - Failure to collect any routine monitoring sample(s).

Date: 09/09/2011 (1001085) CN603229782  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
 30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
 Description: TCR Routine Monitoring Violation 07/2011 - Failure to collect any routine monitoring sample(s).

Date: 12/22/2011 (1001088) CN603229782  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(4)(B)  
 Description: GWR Triggered Source Monitoring Violation 10/2011 - Failure to collect any triggered source monitoring sample(s) following a coliform found result for 1 source.

Date: 02/29/2012 (1001088) CN603229782  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)  
 Description: TCR Repeat Monitoring Violation 10/2011 - Failure to collect any repeats following a coliform found result.

Date: 03/26/2012 (982842) CN603229782  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(E)(ix)  
 Description: Failure by the regulated entity to develop and maintain an up to date system monitoring plan.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(v)  
 Description: Failure to make accessible for review during inspections: calibration records for flow meters.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(ii)  
 Description: Failure to make accessible for review during inspections: the results of inspections.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)  
 Description: Failure to keep on file for commission review the amount of chemicals used each week.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)  
 Description: Failure to perform chlorine residual tests.

Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(b)(4)  
 Description: Failure to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.2 mg/L free chlorine.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
 Description: Failure to collect routine distribution coliform samples at active connections which are representative of water quality throughout the distribution system.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iv)  
 Description: Failure to make accessible for review during inspections: the dates that dead-end mains were flushed.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)  
 Description: Failure to make accessible for review during inspections: a distribution system map.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)  
 Description: Failure to make accessible for review during inspections: a plant operations manual.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(j)  
Description: Failure to certify the chemicals used for disinfection.

- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CYPRESS HILLS LIMITED DBA THE  
CHALLENGE AT CYPRESS HILLS  
RN101188787**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-1003-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Cypress Hills Limited dba The Challenge at Cypress Hills ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

## **I. FINDINGS OF FACT**

1. The Respondent owns and operates a public water supply at 1126 Cypress Valley Lane in Marshall, Harrison County, Texas (the "Facility") that has approximately two service connections and serves at least 25 people per day for at least 60 days per year.
2. During a record review on April 16, 2012, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of March 2011 through July 2011.
3. During a record review on April 16, 2012, TCEQ staff documented that the Respondent did not collect at least four repeat distribution coliform samples within 24 hours of being notified of a coliform-positive sample result that was reported in October 2011.
4. During a record review on April 16, 2012, TCEQ staff documented that the Respondent did not collect one raw groundwater source *Escherichia coli* sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive result during the month of October 2011.
5. The Respondent received notice of the violations on April 27, 2012.

## **II. CONCLUSIONS OF LAW**

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine distribution water samples for coliform analysis, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to collect at least four repeat distribution samples within 24 hours of being notified of a total coliform-positive result, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to collect one raw groundwater source *Escherichia coli* sample from the Facility's well within 24 hours of being notified of a distribution total coliform-positive result, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(4)(B).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of Two Thousand Four Hundred Ninety Dollars (\$2,490) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Two Thousand Four Hundred Ninety Dollar (\$2,490) administrative penalty.

### **III. ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Two Thousand Four Hundred Ninety Dollars (\$2,490) as set forth in Section II, Paragraph 6 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Cypress Hills Limited dba The Challenge at Cypress Hills, Docket No. 2012-1003-PWS-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by collecting routine and repeat distribution samples and raw groundwater source *Escherichia coli* samples; and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliant monitoring; and
  - b. Within 195 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Public Drinking Water Section Manager  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission’s jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

4/9/13  
Date


I, the undersigned, have read and understand the attached Agreed Order in the matter of Cypress Hills Limited dba The Challenge at Cypress Hills. I am authorized to agree to the attached Agreed Order on behalf of Cypress Hills Limited dba The Challenge at Cypress Hills, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Cypress Hills Limited dba The Challenge at Cypress Hills waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

>   
Signature

3-28-2013  
Date

David C. Carlisle

Name (Printed or typed)

Authorized Representative of

Cypress Hills Limited dba The Challenge at Cypress Hills

Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.